

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TOMMY L. MOORE,
11 Plaintiff,
12 vs.
13 OBI SEAFOODS, LLC,
14 Defendant.

Case No. 2:22-cv-00897-JHC
PROTECTIVE ORDER

15 1. PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties
18 request a protective order. The order is consistent with Civil Rule 26(c). It does not confer blanket
19 protection on all disclosures or responses to discovery, the protection it affords from public
20 disclosure and use extends only to the limited information or items that are entitled to confidential
21 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
22 confidential information under seal.

23 2. “CONFIDENTIAL” MATERIAL

24 “Confidential” material shall include the following documents and tangible things
25 produced or otherwise exchanged: employer specific policies and procedures; Plaintiff’s medical
26

1 records; Plaintiff's personnel file; personnel records of current or former employees that include
2 current or former employees' names, residence addresses, and telephone numbers.

3 3. SCOPE

4 The protections conferred by this order cover not only confidential material (as defined
5 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
6 excerpts, summaries, or compilations of confidential material; and (3) any testimony,
7 conversations, or presentations by parties or their counsel that might reveal confidential material.

8 However, the protections conferred by this order do not cover information that is in the
9 public domain or becomes part of the public domain through trial or otherwise.

10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
12 or produced by another party or by a non-party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
14 categories of persons and under the conditions described in this order. Confidential material must
15 be stored and maintained by a receiving party at a location and in a secure manner that ensures that
16 access is limited to the persons authorized under this order.

17 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
18 by the court or permitted in writing by the designating party, a receiving party may disclose any
19 confidential material only to:

20 (a) The parties themselves and the receiving party's counsel of record in this action, as
21 well as employees of counsel to whom it is reasonably necessary to disclose the information for
22 this litigation;

23 (b) the officers, directors, and employees (including in house counsel) of the receiving
24 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a
25 particular document or material produced is for Attorney's Eyes Only and is so designated;

1 (c) experts and consultants to whom disclosure is reasonably necessary for this
2 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) the court, court personnel, and court reporters and their staff;

4 (e) copy or imaging services retained by counsel to assist in the duplication of
5 confidential material, provided that counsel for the party retaining the copy or imaging service
6 instructs the service not to disclose any confidential material to third parties and to immediately
7 return all originals and copies of any confidential material;

8 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
9 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
10 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
11 deposition testimony or exhibits to depositions that reveal confidential material must be separately
12 bound by the court reporter and may not be disclosed to anyone except as permitted under this
13 order;

14 (g) the author or recipient of a document containing the information or a custodian or
15 other person who otherwise possessed or knew the information; and

16 (h) mediators or other persons retained by the parties to engage in alternative dispute
17 resolution.

18 4.3 Filing Confidential Material. Before filing confidential material or discussing or
19 referencing such material in court filings, the filing party shall confer with the designating party
20 to determine whether the designating party will remove the confidential designation, whether the
21 document can be redacted, or whether a motion to seal or stipulation and proposed order is
22 warranted. Civil Rule 5.2 and Local Rule 26(c) set forth the procedures that must be followed and
23 the standards that will be applied when a party seeks permission from the court to file material
24 under seal.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. The
5 designating party must designate for protection only those parts of material, documents, items, or
6 oral or written communications that qualify, so that other portions of the material, documents,
7 items, or communications for which protection is not warranted are not swept unjustifiably within
8 the ambit of this order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
12 and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this order
17 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
18 disclosure or discovery material that qualifies for protection under this order must be clearly so
19 designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (e.g., paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
22 the designating party must affix the word "CONFIDENTIAL" to each page that contains
23 confidential material. If only a portion or portions of the material on a page qualifies for protection,
24 the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
25 markings in the margins).

1 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
 2 participating non-parties must identify on the record, during the deposition or other pretrial
 3 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
 4 after reviewing the transcript. Any party or non-party may, within twenty (20) calendar days after
 5 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 6 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential
 7 information at trial, the issue should be addressed during the pre-trial conference.

8 (c) Other tangible items: the producing party must affix in a prominent place on the
 9 exterior of the container or containers in which the information or item is stored the word
 10 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
 11 the producing party, to the extent practicable, shall identify the protected portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 13 designate qualified information or items does not, standing alone, waive the designating party’s
 14 right to secure protection under this order for such material. Upon timely correction of a
 15 designation, the receiving party must make reasonable efforts to ensure that the material is treated
 16 in accordance with the provisions of this order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 19 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 21 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 25 regarding confidential designations without court involvement. Any motion regarding confidential
 26 designations or for a protective order must include a certification, in the motion or in a declaration

1 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
 2 affected parties in an effort to resolve the dispute without court action. The certification must list
 3 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
 4 to-face meeting, an email exchange or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 6 intervention, the designating party may file and serve a motion to retain confidentiality under Local
 7 Civil Rule 26 (and in compliance with Civil Rule 5.2 if applicable). The burden of persuasion in
 8 any such motion shall be on the designating party. Frivolous challenges, and those made for an
 9 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
 10 may expose the challenging party to sanctions. All parties shall continue to maintain the material
 11 in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 13 OTHER LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
 15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
 16 must:

17 (a) promptly notify the designating party in writing and include a copy of the subpoena
 18 or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 20 the other litigation that some or all of the material covered by the subpoena or order is subject to
 21 this order. Such notification shall include a copy of this order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 23 designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 26 material to any person or in any circumstance not authorized under this order, the receiving party

1 must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b)
2 use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
3 person or persons to whom unauthorized disclosures were made of all the terms of this order, and
4 (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
5 Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
11 is not intended to modify whatever procedure may be established in an e-discovery order or order
12 that provides for production without prior privilege review. The parties agree to the entry of a non-
13 waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all confidential material to the producing party, including all copies, extracts and
17 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
21 product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this order shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise. Nothing herein shall
24 prevent either party from seeking additional relief from this Court to protect certain information
25 and/or from taking steps to redact or withhold certain information deemed by that party to be
26 protected from disclosure. If the other party disputes any such redaction or withholding, the parties

1 shall confer in good faith to try and resolve their dispute prior to seeking judicial intervention as
2 is required under Civil Rule 37(a) and otherwise comply with their respective obligations under
3 applicable civil and local rules.

4 **ORDER**

5 IT IS SO ORDERED.

6 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
7 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or
8 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
9 documents, including the attorney-client privilege, attorney work-product protection, or any other
10 privilege or protection recognized by law.

11
12 DATED: April 24, 2023.


13 
14 The Honorable John H. Chun
15 United States District Court Judge
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington At Seattle
on _____, 2023 in the case of Tommy Moore vs. OBI Seafoods, LLC., Case No. 2:22-cv-
00897-JHC.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington At Seattle for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____